IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1472 OF 1990

Ramesh Vithal Padhye & Ors. ...Petitioners

Vs.

The State of Maharasthra & Ors. ...Respondents

ALONGWITH
WRIT PETITION NO.1898 OF 1992

Professor (Mrs.)Supriya S.Sule & Ors. ...Petitioners

Vs.

University of Bombay & Ors. ...Respondents

ALONGWITH
WRIT PETITION NO.2374 OF 1992

Smt. Tara Ashwin Patel ...Petitioner

Vs.

Kapila Khandvala College
of Education and Ors. ...Respondents

Ms Niloufar Bhagwat for the Petitioners in Writ Petition No.1472 of 1990 and 1898 of 1992.

Mr Mihir Desai for the Petitioner in Writ Petition No.2374 of 1992.

Ms S.M. Dandekar, A.G.P. with Mr M.D.Naik, A.G.P. for the Respondent-State in all the Petitions.

Mr B.V. Phadnis with Shri R. Rodrigues for the Respondent-University of Mumbai in all the Petitions.

CORAM : SMT. RANJANA DESAI AND
SHRI A. S. OKA, JJ.

DATE ON WHICH JUDGMENT IS RESERVED : DECEMBER 20,2005.

DATE ON WHICH JUDGMENT IS PRONOUNCED: JANUARY 13, 2006.

JUDGMENT: (PER A.S.OKA, J):

1. This group of Writ Petitions can be conveniently disposed of by a common judgment as the issues involved in these Petitions are the same.

2. For the sake of convenience, initially we are referring to the facts of the case in Writ Petition No.1472 of 1990 as the main submissions have been made in this Petition. In this Petition under Article 226 of the Constitution of India, the substantive prayer is for declaration that the experience of the lecturers as tutors/demonstartors should be counted for determining placement of lecturers in the senior scale/selection grade/ reader's post for the purposes of Government Resolution dated 27th February, 1989. A prayer is also made for a writ of mandamus directing the first, second and third Respondent to declare that previous service as tutor/ demonstrator should be counted for determining the placement of the lecturer in the senior scale/ selection grade/ reader's post while implementing the Government Resolution dated 27th February, 1989.

3. The Petitioners in this Petition are lecturers employed in various colleges in Mumbai which are affiliated to the fourth Respondent-the University of Mumbai. The Petitioners have been earlier working as demonstrators before they were upgraded with effect from

01st July, 1975 as lecturers. The Petitioners were upgraded as lecturers pursuant to the Government of Maharashtra Resolution dated 25th October, 1977 which provided, inter alia, for conversion of the posts of demonstrators/ tutors into those of teachers by upgrading them and granting them the University Grant Commission Scale of lecturers. The details of the employment of the Petitioners have been set out in Exhibit A to the Petition. The Petitioners have stated that after a long time there was a major revision of pay scales in the year 1989 in the form of the Government of Maharashtra Resolution dated 27th February, 1989. The clauses of the Government Resolution dated 27th February, 1989 which are relevant for the purposes of these Petitions are clauses 12 and 13 which read thus:

> "12. Career Advancement : Every Lecturer/ Assistant Librarian/ Librarian/ Director/ Instructor of Physical Education/ Assistant Director of Physical Education, in the existing scale of Rs.700-1600 will be placed in a senior scale of Rs.3000-5000 if he/she has:-
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> (a) completed eight years of service after regular appointment with relaxation as provided in para 10 above;

(b) participated in two refresher courses/summer institutes, each of approximately four weeks' duration engaged in other appropriate continuing education programmes of comparable quality as may be specified by the University Grants Commission;

(c) consistently satisfactory performance appraisal reports.

. Explanation: All such incumbents in the existing scale of Rs.700-1600, who have completed 8 years of service on 1st January, 1986, will be placed through a process of screening, selection as indicated below, in the scale of Rs.3000-5000. The benefit of service in para 10 will be available for the initial placement also.

13. Every lecturer, Library and Physical Education staff in the senior scale will be eligible for promotion to the post of lecturer (Selection Grade) Reader/ Deputy Librarian/ Deputy Director of Physical Education in the scale of pay of Rs.3700-5700 if he/she has:-

(a) completed eight years of service in the

senior scale provided that the requirement of eight years will be relaxed if the total service of the Lecturer is not less than sixteen years;

(b) obtained a Ph.D. degree, or an equivalent published work.

(c) made some mark in the areas, of scholarship and research as evidenced by self-assessment reports of referees, quality of publications, contribution to educational renovation, design of new courses and curricula etc. OR

. Made significant contribution to the development of Library Services/Physical Education in University as evidenced by self-assessment reports referees, professional improvement in the Library Services/Physical Education activities etc.

. As the case may be

(d) participated in two refresher course/summer institutes, each of approximately four weeks duration of engaged in other appropriate continuing education programmes of comparable quality as may be specified by the University Grants Commission, after

placement in the senior scale; and

(e) consistently good performance appraisal reports."

4. It is stated in the Government Resolution dated 27th February, 1989 that the University Grants Commission had appointed a Committee under Chairmanship of Professor Mehrotra to examine structure of emoluments and conditions of service of University and College teachers. After considering the Mehrotra Committee's report, the University Grant Commission submitted its recommendations to the Government of India in February 1987. After examination of the report, the Government of India evolved a scheme of pay revision for the University and College teachers and other measures for improvement of standard in higher education. By various communications, the Government of India recommended to the State Governments to implement the scheme. After considering the recommendations of the Government of India the said Government Resolution dated 27th February, 1989 was issued by the State of Maharashtra.

5. The case of the Petitioners is that all of them have been initially employed as demonstrators and

later on upgraded as lecturers in the science colleges affiliated to the University of Mumbai. The contention of the Petitioners is that the distinction between the demonstrators and lecturers in science faculty was always an artificial distinction and artificial division of labour. It is contended that as no scientific demonstration by a demonstrator can take place without a verbal analysis of the demonstration/presentation and therefore, virtually every demonstrator was a lecturer. It is stated that 60 per cent of the academic work in the science faculties involved demonstration/ practicals. It is stated that in recognition of the fact that distinction between demonstrators/ tutors and lecturers was arbitrary, the State Government implemented University Grant Commission scheme of pay revision in the year 1977 which provides for a parity between demonstrators and lecturers and recommended abolition of posts of demonstrators/ tutors by upgrading the said posts of demonstrators/ tutors held by persons possessing the qualifications for the posts of lecturers into those of lecturers.

6. The contention of the Petitioners is that while computing the period of service in terms of sub clauses (a) of clause No.12 and 13 of the said Government Resolution, the service rendered as demonstrator/tutor

will have to be considered as there is no distinction made in the said resolution between the lecturers and demonstrators/ tutors. It is stated in the Petition that the State of Gujarat also implemented the same recommendations of the University Grant Commission. In the Government Resolution dated 14th September, 1988 of the Government of Gujarat identical provisions as contained in clause No.12 and 13 of the Government of Maharashtra Resolution dated 27th February, 1989 were incorporated with only difference that it was specifically mentioned in the Gujarat Government Resolution that while computing period of service, previous service as tutors/ demonstrators should be counted as a service as a lecturer. It is stated in the Petition that by circular dated 22nd December, 1989, the Registrar of the fourth Respondent-University of Mumbai informed the Principals of the affiliated colleges that University proposes to write to the Director of the Education that the experience of the lecturers as tutors/ demonstrators should be counted for determining the placement of the lecturer in the senior scale/ selection grade/ reader’s posts.

7. The contention of the Petitioners is that very object of accepting the scheme of the University Grant Commission and Central Government will be defeated if

experience of the Petitioners as demonstrators/ tutors is not treated as the experience as lecturers. It is submitted that under the Mumbai University Act, 1974, section 2(30) defines "teacher" as including demonstrators and tutors. It is submitted that initially Central Government was to provide 80 per cent assistance to every State for implementation of the scheme of pay revision and, therefore, there cannot be any discrimination between the lecturers in the State of Gujarat and lecturers in the State of Maharashtra especially when the State of Maharashtra has purpotedly accepted the recommendations of the University Grant Commission which were accepted by the Central Government.

8. An affidavit-in-reply has been filed by Professor Kishore K. Theckedath, General Secretary of the sixth Respondent. The sixth Respondent is the Maharashtra Federation of University of College Teachers' Organization. The Petitioners have placed reliance on paragraph 11 of said affidavit-in-reply. The relevant part of which reads thus:

> 11. I say that on or about 15th January 1990 the Respondent No.6 (MFUCTO) had a meeting with the Hon'ble Minister for Education, Shri Kamalkishore Kadam, and when the issue of counting of demonstrator/tutor/method master service was taken

up, the Hon'ble Minsiter had, in fact, stated that "in the case of teachers who are lecturers, their service as tutor, demonstrator or method masters will be counted for placement in the higher grade from the date of their acquiring qualifications prescribed for lecturers by their respective universities, from time to time. I say that it was also stated that the matter could be resolved satisfactorily in a single meeting between the Respondent No.1 and the Respondent No.6 (MFUCTO).

9. In reply to the affidavit of the sixth Respondent, the Petitioner No.2 filed a short affidavit annexing thereto a copy of circular dated 22nd December, 1989 issued by the Registrar of the fourth Respondent-University which is already referred to in the Petition. To the said affidavit, a copy of report dated 04th February, 1991 of the Grievance Redressal Committee appointed by the Executive Council of the fourth Respondent-University has been annexed. One of the grievance considered by the said Committee of the Teachers' was the same as grievance of the Petitioners in the Writ Petition No.1472 of 1990. The Committee recommended that while computing the total service of lecturer his entire service rendered as tutor, method master or demonstrator be also considered as a qualifying service.

10. A reply was filed by Shri A.C. Sawant, Administrative Officer in the office of Joint Director of Higher Education on behalf of the first Respondent- State of Maharashtra. The State Government opposed the Petition by pointing out that the posts of tutor/ demonstrators have been abolished much prior to the Government Resolution dated 27th February, 1989 and, therefore, the question of computing the service as tutor/ demonstrator does not arise. In paragraph 12 of the affidavit it is stated as under:

> 12. I further say that the U.G.C. or the State Government has not abolished the post of tutor/demonstrator with retrospective effect means from the date of creation of these posts. The Petitioner is trying to mislead. The U.G.C. has came to conclusion in 1975 that there is no need for the post of Demonstrator and therefore, the persons working as Demonstrator/tutor having the qualification required for the post of lecturer have been upgraded as a Lecturer from 1st July 1975 and therefore, their earlier service as a demonstrator/tutor shall not be counted for the Career Advancement Scheme.

To the said affidavit-in-reply of the first Respondent,

the Petitioner No.2 filed a rejoinder. In the said rejoinder, reliance was placed on statute 107 of University of Goa which is approved by the Government of Goa which provides for considering the service rendered by lecturers as demonstrators/ tutors.

11. Ms Niloufar Bhagwat appearing for the Petitioners has taken us through the relevant documents annexed to the Petition and to the affidavits filed on record. She has invited our attention to the relevant averments in the Petition. She has placed reliance on decision of a Division Bench of this Court (Coram : A.P.Shah and S.J. Vazifdar, JJ) dated 17th February, 2005 in Writ Petition No.2903 of 1989 (Professor Parvez H. Lentin Vs. The Principal St. Xavier's College & Ors.). She submitted that the case of the Petitioners is completely covered by the said decision. She invited our attention to the prayers granted by the Division Bench of this Court in the said Writ Petition. She submitted that as the University of Mumbai and the State of Maharashtra have not challenged the said decision, the same has attained finality. She, however, fairly stated that in the case of Professor Parvez H. Lentin (Supra), the Division Bench was not informed about the decision of the Nagpur Bench of this Court in the case of Harishchandra Jethmal Gandhi & Ors. Vs. State of Maharashtra & Ors.

[1995(II)CLR Page 904] which has interpreted clause No.12(a) and 13(a) of the Government Resolution dated 27th February, 1989. She has, however, submitted that the said decision relates to the teachers working in colleges affiliated to Nagpur and Amravati Universities. She submitted that in view of the recommendations of the Grievance Committed appointed by the University of Mumbai and inview of the decision of this Court in the case of Professor Parvez H. Lentin (Supra), the law laid down by the Nagpur Bench in so far as teachers employed in the colleges affiliated to the University of Mumbai are concerned will not apply. She submitted that even assuming that the decision of the Nagpur Bench is a binding precedent, it will bind the teachers of the colleges affiliated to University of Nagpur and Amaravati.

12. Shri Rodrigues, the learned Counsel appearing for the fourth Respondent-University of Mumbai did not dispute that the said University has not challenged the decision of this Court in the case of Professor Parvez H. Lentin. He invited our attention to order dated 04th August, 2005 passed by this Court in the present Petition by which this Court directed the learned A.G.P. to ascertain whether it was possible for the State Government to relax the eligibility of completion of

eight years of service in the senior scale for promotion to the post of reader if the total service of the lecturer was not less than sixteen years including the service rendered as demonstrator/ tutor if such demonstrator/ tutor were qualified to be appointed as lecturers. He submitted that it is for the State Government to take appropriate decision in the matter. He has not disputed the factual averments made in these three Petitions.

13. The learned A.G.P. appearing for the State Government stated that in accordance with the order dated 04th August, 2005 he had sought instructions from the State Government and the same are not received as yet. He submitted that there is a clear divergence in the views taken by the two different Division Benches of this Court in the case of Professor Parvez H. Lentin and in the case of Harishchandra Jethmal Gandhi and Ors and therefore, a reference will have to be made to a larger bench. He did not dispute that the State Government has not challenged the decision of this Court in the case of Professor Parvez H. Lentin.

14. We have considered the rival submissions. It will be necessary to refer to the relevant portion of Government of Maharashtra Resolution dated 25th October,

1977. By the said Government Resolution, it was provided that non-government colleges shall upgrade with effect from 01st July, 1975 the existing posts of demonstrator/ tutors held by the persons possessing qualifications for the post of lecturers as prescribed by the University concerned into those of lecturers. Clause No.12 of the Government Resolution dated 27th February, 1989 provides that every lecturer in the existing payscale of Rs.700-1600 will be placed in a senior scale of Rs.3000-5000 if he or she has completed eight years of service after regular appointment, subject to relaxation as provided in paragraph No.10 and if he or she has participated in two refresher courses each of approximately four weeks duration. Clause 13 provides that every lecturer, Library and Physical Education staff in the senior scale will be eligible for promotion to the post of lecturer (selection grade) reader/ deputy librarian/ deputy director of Physical Education in the scale of pay of Rs.3700-5700 if he or she has (a) completed eight years of service in the senior scale provided that the requirement of eight years will be relaxed if the total service of the lecturer is not less than sixteen years; (b) obtained a Ph.D degree, or an equivalent published work; (c) made some mark in the areas, of scholarship and research as evidenced by self-assessment reports of referees, quality of

publications, contribution to educational renovation, design of new courses and cirricula; (d) participated in two refresher courses/summer institutes, each of approximately four weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the University Grants Commission, after placement in the senior scale; and (e) has consistently good performance appraisal reports.

15. It will be necessary to refer to the Writ Petition of Professor Parvez H. Lentin. Prayers b, c1 to c4 of the said Writ Petition are relevant for our consideration which read thus:

> b) That this Hon'ble Court be pleased to issue a Writ quashing the impugned communication dated 27th July 1989 issued by Respondent No.1 and 2 placing the Petitioner on probation with effect from June 20, 1988 and the Petitioner be declared to be a permanent lecturer at the said college from the deemed date of 01st July, 1975 as per the U.G.C. Resolution;
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> c1) That this Hon'ble Court be pleased to issue a Writ direction or order directing Respondents 1,2,3,4 and 5 to place the Petitioner in the UGC selection grade/scale of Rs.3700- Rs.5700- with

effect from 1.1.1986.

c2) That this Hon’ble Court be pleased to issue a Writ Order or direction declaring that the experience of a lecturer as tutor/demonstrator should be counted for determining placement of a lecturer in the senior scale/selection grade/readers’s post for the purpose of the Government Resolution No.NGC 1286/(1224)/UNI-4 dated 27th February, 1989 for the purpose of fixation of scale under the Government Resolution NGC 1286/(1224)/UNI-4 dated 27th February, 1989;

c3) That this Hon’ble Court be pleased to issue a Writ of Mandamus or a Writ, Order or Direction in the nature of Mandamus directing the Respondents 1 to 5 to immediately implement the decisions of the University of Bombay placing the Petitioners in the selection grade of Rs.3700-5700/- in the revised grade/scale prescribed for lecturers who have completed more than 16 years of teaching with retrospective effect from 1.1.1986 as per the revised scale recommended by the University Grants Commission Scheme;

c4) That this Hon’ble Court be pleased to issue a

writ of Mandamus or a Writ order of direction in the nature of mandamus directing Respondent No.1 to 5 to declare that previous service as tutor/demonstrator shall be counted for determining the placement of a lecturer in the senior scale/selection grade/Readers's post while implementing the Resolution No.NGC 1286/(1224)UNI-4 dated 27th February, 1989 issued by the Education and Employment Department of the Government of Maharashtra.

16. The aforesaid Petitioner-Professor Lentin was appointed as a full time demonstrator in Physics in Siddharth College of Arts, Science and Commerce with effect from June 1970. The said Petitioner worked from June 1972 to 1974 in the K.C. College at Mumbai as demonstrator. The Petitioner was thereafter appointed as a part-time demonstrator in Physics in St. Xavier's College from 01st July, 1974. By letter of appointment dated 15th July, 1975 the Petitioner was appointed as a full time demonstrator in Physics in St. Xavier's College. The contention of the Petitioner was that notwithstanding the Government Resolution of the year 1975, the Petitioner was not granted upgradation to the lecturers' post with effect from 01st July, 1975. On June 16th, 1976 the Petitioner was appointed as a full

time teacher in the Junior College run by the same college. With effect from May 1980, the Petitioner was transferred back to the Senior College as a lecturer in Physics. The Petitioner was confirmed as a lecturer on 06th September, 1988. By amending the Petition, reliance was placed on Government Resolution dated 27th February, 1989. The contention raised in the Petition was that the service rendered by him as a demonstrator and as a lecturer in Junior College will have to be counted for the purposes of placement of the Petitioner in senior scale/ selection grade/ readers post.

17. After dealing with the contentions raised by the parties this court accepted the case of the said Petitioner and passed the following operative order:

> 20. We hold that the Petitioner is entitled to continuity of service from 15.7.1975 when he was appointed in a full time post of demonstrator in physics in the senior college, with all consequential benefits.
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> 21. Rule is accordingly made absolute in terms of prayer clause (b), (c1) to (c4). The State Government is directed to comply with this order within a period of three months from today.

18. As a result of grant of prayer clause c1 to c4 of the Petition, it is very clear that this court directed that previous service of lecturer as a tutor/ demonstrator should be counted for determining placement of lecturer in senior scale/ selection grade/ readers post while implementing the Government Resolution dated 27th February, 1989 issued by the Government of Maharashtra. The Petitioner in the said case was working in college affiliated to University of Mumbai. Thus, this court granted benefit to the said Petitioner of placement in senior scale in accordance with clause No.12 of Government Resolution dated 27th February, 1989 and to the post of lecturer (selection grade) in accordance with clause NO.13 of the said Government Resolution. Thus, this court accepted the case made out by the Petitioner that the service rendered as a demonstrator/tutor will have to be computed for the purposes of clauses (a) of clause 12 and 13 of the said Government Resolution.

19. As pointed out earlier neither the State Government nor the University of Mumbai have challenged the said decision of this court. Time of three months was granted to the State Government by this Court to comply with the order. The said time has expired long back. Thus, the Petitioner in Writ Petition No.2903 of

1989 who is on par with the Petitioners in the Writ Petition No.1472 of 1990 has been granted the same relief which is prayed for in Writ Petition NO.1472 of 1990. The Petitioners have brought on record that the teachers working in colleges affiliated to University of Goa have been granted the same relief. The same is case with the teachers affiliated to various Universities in the State of Gujarat. Thus, on the basis of decision of this Court in Writ Petition No.2903 of 1989, the Petitioners are entitled to the relief prayed for in Writ Petition No.1472 of 1990.

20. The question which is now required to be considered is whether the Petitioners are disentitled to the relief claimed on the basis of the decision of Nagpur Bench of this Court in the case of Harishchandra Gandhi and Ors (supra). Perusal of the said decision of the Nagpur Bench shows that the Petitioners therein were initially appointed as demonstrators or tutors in the colleges affiliated to Nagpur and Amravati Universities. The controversy involved in the said Petition was the same as is involved in this Petition. It appears that the Nagpur University supported the case of the Petitioners. It appears that recommendation was made by the Co-ordination Committee of Nagpur University that the services as the demonstrators/ tutors can be taken into

consideration for giving effect to the Government Resolution dated 27th February, 1989. The Division Bench held that recommendations of the Co-ordination Committee and its acceptance by the Executive Committee of Nagpur University has no rationale. The said decision no doubt has attained finality in so far as the Petitioners therein who were working as lecturers in the colleges affiliated to Nagpur and Amravati University are concerned. On the other hand, a lecturer who was employed in a college affiliated to University of Mumbai has been already granted relief by the Division Bench of this Court and the said decision has not been challenged by either the State Government or the University of Mumbai. The Petitioners in Writ Petition No.1472 of 1990 are on par with the Petitioner in Writ Petition No.2903 of 1989 which has been finally decided by this Court. Hence, there is no reason why the Petitioners who are also similarly placed should not be granted the relief which was granted by this Court in the case of Professor Parvez H. Lentin. The decision in the case of Professor Parvez H. Lentin will naturally apply to all the similarly placed lecturers in the colleges affiliated to the fourth Respondent- University of Mumbai. While considering the decision of this Court in the case of Harishchandra Gandhi and Ors.(Supra), we cannot ignore what has been held by the Supreme Court in the case of

Gangadhar Behera Vs. State of Orissa reported in (2002) 8 Supreme Court Cases Page 381. The Apex Court held that there is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

21. Now coming to the facts of the Writ Petition No.1898 of 1992, the Petitioners therein are lecturers employed in K.C. College at Mumbai in its Biology Department. The Petitioners were initially appointed as demonstrators in various colleges affiliated to University of Mumbai. Perusal of the averments made in the Writ Petition shows that the case of the Petitioners in the said Petition is similar to the case of the Petitioners in the Writ Petition No.1472 of 1990.

22. In Writ Petition No.2374 of 1992, the Petitioner is employed as a lecturer in a B.Ed Degree College. The Petitioner was initially appointed as a tutor in the Sadhana College of Education in the year 1972. The Petitioner worked subsequently as a tutor (method master) in another college of Education i.e. the

Respondent No.2 in the Petition. Perusal of the averments made in the Petition show that the case of the Petitioner is almost similar to the case of the Petitioner in the other two Petitions the only difference being that the Petitioner herein has worked as a tutor instead of a demonstrator.

23. In our considered view, these Petitions must succeed and the Petitioners are entitled to the same reliefs which are granted in Writ Petition No.2903 of 1989.

24. Hence, we pass the following order:

: O R D E R :

i) We direct that while computing the period of service of the lecturers for the purposes of clause (a) of paragraph 12 and clause (a) of paragraph 13 of the Government of Maharashtra Resolution dated 27th February, 1989 bearing No.NGC 1286/(1224)/UNI-4, the service rendered by the lecturers as tutors/demonstrator shall be counted and necessary benefits shall be conferred on the Petitioners in terms of paragraph Nos.12 and 13 of the Government

Resolution dated 27th February, 1989, if the Petitioners are otherwise found to be eligible to receive the said benefits.

ii) The State Government will implement this order in all respects within period of four months from today.

iii) Rule is made partly absolute in above terms.

Smt Ranjana Desai, J

Shri A.S. Oka, J.